

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|-------------------------------|---|------------------------------------|---------------------------------|
| Investigator: Owen Godshall | Team: Team # 6 | CCRB Case #: 201307019 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Friday, 07/05/2013 1:00 AM | Location of Incident: 1244 Grand Concourse | Precinct: 44 | 18 Mo. SOL 1/5/2015 | EO SOL 1/5/2015 | |
| Date/Time CV Reported Fri, 08/02/2013 1:20 PM | CV Reported At: CCRB | How CV Reported: In-person | Date/Time Received at CCRB Fri, 08/02/2013 1:20 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Wilfredo Benitez | 15506 | 947459 | 044 PCT |
| 2. POM Andre Smith | 15753 | 937553 | 044 PCT |
| 3. LT Wilbert Morales | 00000 | 895757 | 044 PCT |
| 4. POM Sean Kelly | 04838 | 949162 | 044 PCT |
| 5. POM Michael Rivera | 26688 | 948413 | 044 PCT |
| 6. Officers | | | 044 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Anderson Ortiz | 26151 | 949424 | 044 PCT |
| 2. POM Eric Miller | 3190 | 944812 | 044 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.POM Sean Kelly | Force: PO Sean Kelly used physical force against § 87(2)(b) | |
| B.POM Sean Kelly | Abuse: PO Sean Kelly refused to provide his name to § 87(2)(b) | |
| C.POM Andre Smith | Abuse: PO Andre Smith did not obtain medical treatment for § 87(2)(b) | |
| D.POM Wilfredo Benitez | Abuse: PO Wilfredo Benitez did not obtain medical treatment for § 87(2)(b) | |
| E.POM Sean Kelly | Abuse: PO Sean Kelly did not obtain medical treatment for § 87(2)(b) | |
| F. Officers | Abuse: Officers did not obtain medical treatment for § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|------------|-----------------------------|
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On August 2, 2013, § 87(2)(b) filed this complaint with the CCRB in-person.

At approximately 1:00 a.m. on July 5, 2013, § 87(2)(b) was arrested for § 87(2)(b) by PO Andre Smith of the 44th Precinct at the intersection of McClellan Street and Sheridan Avenue, in the Bronx. The following allegations resulted:

- **Allegation A: Force –PO Sean Kelly used physical force against § 87(2)(b)**
- **Allegation B: Abuse of Authority –PO Sean Kelly refused to provide his name to § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C: Abuse of Authority –PO Andre Smith did not obtain medical treatment for § 87(2)(b)**
- **Allegation D: Abuse of Authority –PO Wilfredo Benitez did not obtain medical treatment for § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E: Abuse of Authority –PO Sean Kelly did not obtain medical treatment for § 87(2)(b)**
- **Allegation F: Abuse of Authority – Officers did not obtain medical treatment for § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(4-b), § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a 6', 204-pound black male with black hair and brown eyes.* § 87(2)(b)

Written Statement

During his interview, § 87(2)(b) provided a written statement, prepared on an unknown date (Encl. 6A-D). § 87(2)(g)

Notice of Claim

§ 87(2)(b) submitted a Notice of Claim in regards to the incident on § 87(2)(b) (Encl. 6E-H), in which he provided a brief narrative of the incident. He alleged that he was assaulted and verbally abused by two unidentified officers at the intersection of McClellan Street and Sheridan Avenue, as well as the 44th Precinct stationhouse, Bronx Central Booking, and court. He did not specify what actions the officers took towards him. § 87(2)(b) did not mention going to Central Booking in any of his other statements.

Statements to Medical Providers

§ 87(2)(b) was treated for pain in his chest, shoulder, back and knee at § 87(2)(b) on July 5, 2013. § 87(2)(b) told his doctor that he had sustained these injuries when he was arrested at a block party. He stated that the police threw him to the ground and punched him in the chest (Encl. 17A).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on August 2, 2013 (Encl. 6I-L). § 87(2)(g)

At approximately 1:00 a.m. on July 5, 2013, § 87(2)(b) was attending a Fourth of July cookout, held at the intersection of McClellan Street and Sheridan Avenue, in the Bronx. The event had been going on since earlier in the afternoon, and had dwindled to ten to fifteen people. § 87(2)(b) identified several of the other partygoers as § 87(2)(b) and § 87(2)(b). While the group had been drinking earlier in the evening, § 87(2)(b) denied having any alcohol after 8:00 p.m. The gathering was quiet, and was not causing any kind of disturbance. Partygoers were spread between two storefronts on opposite sides of the street, standing both on the sidewalks and in the street. Two other cookouts were occurring on the block, but § 87(2)(b) had no interaction with them.

The party was interrupted when a marked van pulled up to the intersection. Five uniformed officers, identified by the investigation as PO Andre Smith, PO Wilfredo Benitez, PO Sean Kelly, PO Eric Miller, and PO Michael Rivera, exited the van. § 87(2)(b) described PO Smith as slim 5'8" black male in his twenties, PO Benitez as an athletic 5'11" Hispanic male in his thirties, and PO Kelly as a slim 5'7" white male in his twenties. He was only able to describe PO Miller and PO Rivera as black males.

PO Benitez ordered the partygoers to disperse. § 87(2)(b) asked PO Benitez if he could finish grilling his food before leaving, but PO Benitez told him he had to leave immediately. While most of the partygoers complied with the order and began packing up, § 87(2)(b) feeling that the officers were unfairly targeting his cookout while allowing the other ones on the block to continue, began protesting PO Benitez's command. He did not raise his voice to PO Benitez. § 87(2)(b) did not mention any interactions between the officers and any of the other partygoers.

While speaking with PO Benitez, § 87(2)(b) heard one of the other officers, whom he could not identify, call for backup. Within minutes, two unmarked sedans arrived at the location. Four uniformed officers exited the vehicles. The investigation identified one of these officers as Lt. Wilbert Morales. § 87(2)(b) described Lt. Morales as a stocky Hispanic male in his forties, wearing a white uniform shirt. He was unable to describe any of the other officers.

After complaining to PO Benitez for several minutes, § 87(2)(b) gave up, and attempted to walk away. PO Smith, PO Benitez, and Lt. Morales, however, followed § 87(2)(b). PO Smith and PO Benitez then pushed § 87(2)(b) front-first against the side of one of the unmarked car. Expecting the officers to frisk him, § 87(2)(b) attempted to place his hands on top of the car to allow them access to his waist. In response, one of the two officers grabbed § 87(2)(b)'s feet and pulled them out from under him.

§ 87(2)(b) fell to the ground, first landing on his back, before bouncing up and landing on his right side. All of the officers gathered around § 87(2)(b) save for PO Kelly, who stood over § 87(2)(b) and warned the other partygoers to stay away from him. One of the officers placed his knee on § 87(2)(b)'s neck, while the other officers pulled his arms behind his back. § 87(2)(b) was then handcuffed and lifted off the ground. § 87(2)(b) denied offering the officers any resistance during his handcuffing. He did not suffer any injuries or feel any pain when he was taken to the ground.

After being handcuffed, PO Smith, PO Benitez and PO Kelly loaded § 87(2)(b) into the marked van. § 87(2)(b) repeatedly asked why he had been arrested, but none of the officers responded. Five minutes later, PO Smith, PO Benitez, PO Kelly, PO Miller and PO Rivera got back into the van with § 87(2)(b) and drove away. A few blocks away, however, the van stopped again, in front of 1244 Grand Concourse. § 87(2)(b) did not know why the van stopped. All of the officers exited the van except for PO Benitez, who was in the driver's seat. While he waited in the van with PO Benitez, § 87(2)(b) managed to remove his phone from his pocket. Then, while using the phone to record the conversation, he asked PO Benitez why he had been arrested. PO Benitez told him that it was because he had not packed up his belongings when ordered to. § 87(2)(b) then asked PO Benitez for his name. PO Benitez initially hesitated, but then provided his name to § 87(2)(b). § 87(2)(b) then asked PO Benitez for his shield number. Before PO Benitez could reply, however, the other four officers returned. § 87(2)(b) did not hear whether PO Benitez answered this question.

When the other four officers returned, they had a young Hispanic male, identified by the investigation as § 87(2)(b) with them. Either PO Rivera or PO Miller, upon noticing that § 87(2)(b) was using his cell phone, grabbed the phone from his hand. PO Kelly then got into the van and punched § 87(2)(b) five or six times in the center of his chest. While the blows did not cause any bruising, § 87(2)(b) felt serious pain in his chest. § 87(2)(b) asked PO Kelly several times for his name, but PO Kelly only replied, "Shut the fuck up." § 87(2)(b) then asked the officers if they would take him to a hospital for his chest pains. This request was addressed to all five officers. PO Kelly told § 87(2)(b) once more, "Shut the fuck up." None of the other officers made any response to this request.

§ 87(2)(b) was then taken to the 44th Precinct stationhouse, where he was released shortly afterwards. He believed that he was issued a desk appearance ticket, but the investigation determined that he was instead issued a summons by PO Smith for § 87(2)(b). § 87(2)(b) did not receive any medical attention while in police custody.

Immediately after his release, § 87(2)(b) called 911 in regards to his chest pain. He waited outside of the stationhouse for EMS to respond, but before the ambulance arrived, he changed his mind and walked home. The next morning, § 87(2)(b) called an ambulance from home, and was driven to § 87(2)(b). There, he received an X-ray, which showed that he did not have any fractured bones. § 87(2)(b) was prescribed painkillers and released. Since the incident, § 87(2)(b) has experienced pain to his right knee, forcing him to walk with a cane.

During his interview, § 87(2)(b) showed video footage of the incident provided by § 87(2)(b). He identified the white male officer seen in the video as the same officer who later punched him in the van.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a black male.*

CCRB Testimony

§ 87(2)(b) provided a telephone statement on August 15, 2013 (Encl. 7A). § 87(2)(g)

§ 87(2)(b) identified several other individuals from the cookout, giving their names as “§ 87(2)(b)”, “§ 87(2)(b)”, and “§ 87(2)(b)”. He did not know any of their last names. At first, only PO Benitez and PO Smith responded to the location in the marked van. § 87(2)(b) described PO Benitez as a 5’9” Hispanic male in his thirties, and PO Smith as a bald, 5’9” black male in his thirties.

Initially, § 87(2)(b) stated that when PO Benitez initially told the group to disperse, he told them all, “You gotta go or I’m going to arrest you.” Later, he stated that while he did not recall the exact phrasing PO Benitez used, he was certain that PO Benitez threatened to arrest them.

The rest of the officers arrived at the location while § 87(2)(b) and PO Benitez spoke. § 87(2)(b) was only able to describe three of them. Lt. Morales, described as a bald 5’7” light-skinned male, arrived in a marked SUV. PO Kelly, described as a stocky 5’8” white male, arrived in an unmarked black car. § 87(2)(b) described PO Rivera as a 5’8” light-skinned male in his twenties, but did not recall which vehicle he arrived in.

§ 87(2)(b) stated that PO Kelly also assisted PO Benitez and PO Smith in pushing § 87(2)(b) against the unmarked car during his arrest. After the arrest, Lt. Morales told § 87(2)(b) that § 87(2)(b) would be released from custody in only a few hours. § 87(2)(b) did not travel with § 87(2)(b) to the 44th Precinct stationhouse, and did not witness what happened to § 87(2)(b) on the way. He did not state which of the officers traveled with § 87(2)(b) in the marked van. He made no mention of § 87(2)(b)’s arrest.

Attempts to Schedule Sworn Statement

During his telephone statement, § 87(2)(b) confirmed his address and telephone number. He also scheduled an interview for August 19, 2013. On the day of the interview, he called and asked to reschedule the interview for August 23, 2013. He did not, however, appear for this interview, and did not call ahead to cancel or reschedule. A missed appointment letter was mailed to him on August 25, 2013. Between August 27, 2013 and September 11, 2013, two calls were made to § 87(2)(b).

§ 87(2)(b) to reschedule. A message was left on the first call, and on the second, he rescheduled for September 25, 2013. § 87(2)(b) also failed to appear for this second appointment. He did not call ahead to cancel or reschedule. A March 25, 2014 search of the Department of Correction's online inmate database showed that § 87(2)(b) is not incarcerated (Encl. 8A).

Attempts to Contact Civilians

- § 87(2)(b) identified several friends who witnessed the incident, including § 87(2)(b) and § 87(2)(b) provided telephone numbers for each of them. An August 21, 2013 Lexis Nexis search returned addresses for each of them. Between August 15, 2013 and September 23, 2013, five telephone calls were made and two please-call letters were sent to each individual. None of these letters were returned to the CCRB by the US Postal Service. A March 25, 2014 search of the Department of Correction's online inmate database showed that none of these individuals are incarcerated (Encl. 8B-E). To date, none have responded to repeated contact attempts.
- § 87(2)(b) and § 87(2)(b) also provided the first names of several other witnesses, but were not able to provide their last names, addresses, or telephone numbers. Contact attempts therefore could not be made to these individuals.
- The individual arrested on the Grand Concourse was identified by arrest records as § 87(2)(b). His address, but not his telephone number, was provided on the arrest report. An August 15, 2013 Lexis Nexis search returned no further information for § 87(2)(b). A please-call letter was sent on August 15, 2013. On August 20, 2013, § 87(2)(b) called the CCRB in response to the letter. He provided a telephone number and scheduled an interview for August 22, 2013. § 87(2)(b) declined to give any statement regarding the incident over the phone, stating that he would only speak in-person. He did not appear for this interview, and failed to call ahead to cancel or reschedule. On August 27, 2013, a call was made to § 87(2)(b) and he rescheduled his interview for August 28, 2013. § 87(2)(b) however, did not appear for this appointment either, and once again failed to call ahead to cancel or reschedule.

NYPD Statement(s):

Subject Officer: PO ANDRE SMITH

- *PO Smith, § 87(2)(b) old at the time of the incident, is a 5'10", 190-pound black male with black hair and brown eyes.*
- *PO Smith worked from 9:30 p.m. on July 4, 2013 until 6:05 a.m. on July 5, 2013. He was assigned to Conditions with PO Wilfredo Benitez. PO Smith was in uniform, and assigned to marked van #8625.*

Memo Book

At 12:55 a.m. on July 5, 2013, PO Smith attempted to disperse a gathering at the intersection of McClellan Street and Sheridan Avenue. The group ignored multiple requests to disperse. One individual, § 87(2)(b) actively refused to leave. When officers attempted to handcuff § 87(2)(b) he resisted by stiffening his arms and walking away from the officers. At 1:20 a.m., § 87(2)(b) was arrested. Lt. Wilbert Morales was present at the time. § 87(2)(b) was later released with a summons at the 44th Precinct stationhouse. At 1:25 a.m., while transporting § 87(2)(b) PO Smith observed § 87(2)(b) in § 87(2)(b). PO Smith arrested § 87(2)(b) (Encl. 9A-C).

Summons #§ 87(2)(b)

At 1:00 a.m. on July 5, 2013, PO Smith issued § 87(2)(b) a summons for § 87(2)(b), stating that § 87(2)(b) refused a lawful order to disperse from the intersection of McClellan Street and Sheridan Avenue (Encl. 9D-E).

Arrest #B13646596

At 1:20 a.m. on July 5, 2013, § 87(2)(b) was arrested in front of 1244 Grand Concourse by PO Andre Smith. He was charged with § 87(2)(b). The narrative states that he was seen with fireworks in plain view, and found to have more on him when searched incident to arrest (Encl. 9F-H).

CCRB Testimony

PO Smith was interviewed at the CCRB on January 8, 2014 (Encl. 9I-K). At approximately 12:55 a.m. on July 5, 2013, PO Smith and PO Benitez were on patrol when they noticed approximately twenty individuals holding a barbeque at the intersection of McClellan Street and Sheridan Avenue, in the Bronx. Since the group was obstructing traffic on the street, and it was well after midnight, the two officers exited their van and instructed the group to disperse. While several of the individuals complied with the order and began packing their belongings, one individual, identified by PO Smith as § 87(2)(b) continued cooking in defiance of the officers' instructions. Both PO Smith and PO Benitez spoke to § 87(2)(b) repeating their commands to leave the area. PO Smith did not recall how many times § 87(2)(b) was instructed to leave. § 87(2)(b) remained calm as the officers spoke to him, and did not raise his voice to the officers. Despite his calm demeanor, he refused to comply with the officers' orders.

PO Smith and PO Benitez waited there for the group to disperse for approximately twenty minutes. § 87(2)(b) did not leave during that period. As they waited, several additional officers responded to the location. While PO Smith was only able to recall Lt. Morales responding, the investigation determined that PO Rivera, PO Kelly, and PO Miller also responded. By the time these officers arrived, PO Smith had ceased speaking with § 87(2)(b) PO Benitez continued to speak to § 87(2)(b) on the south side of the street, while PO Smith stood on the north side, supervising as the rest of the gathering dispersed.

While PO Smith dealt with the other partygoers, PO Benitez placed § 87(2)(b) under arrest for § 87(2)(b). Several other officers assisted PO Benitez in restraining § 87(2)(b) but PO Smith did not recall which ones. PO Smith denied any physical involvement in the arrest. § 87(2)(b) resisted PO Benitez and the other officers by stiffening his arms to prevent them from being pulled back, and attempting to move away from the officers. The officers overcame this resistance by pulling his arms behind his back. § 87(2)(b) was not taken to the ground. No further physical force was used against him.

Once § 87(2)(b) was handcuffed, he was loaded into PO Smith's van. PO Smith did not recall any significant interactions between the officers and the other bystanders at that time. When § 87(2)(b) was secured in the van, PO Benitez and PO Smith drove him from the location. No other officers accompanied them in the van.

A few blocks from the intersection, in front of 1244 Grand Concourse, PO Smith observed an individual, whom he identified as § 87(2)(b) carrying a small cylindrical object with a fuse attached to the end. PO Smith quickly identified the object as an explosive firework. He did not recall how far away he was from § 87(2)(b) when he made this observation. The two officers pulled over their van and approached § 87(2)(b). Either PO Smith or PO Benitez asked § 87(2)(b) if he had a permit. When § 87(2)(b) replied that he did not, the officers arrested him. § 87(2)(b) was compliant with the officers, and no force was used to handcuff him.

PO Smith did not recall § 87(2)(b) operating a cell phone while inside of the prisoner van. He did not see any officer strike § 87(2)(b). § 87(2)(b) did not complain of any injuries, request medical attention, or ask for any officer's name or shield number. PO Smith did not observe any injuries to § 87(2)(b). No officer told § 87(2)(b) "Shut the fuck up." No officer used profanity at any point during the incident.

After § 87(2)(b)'s arrest, PO Smith and PO Benitez drove both prisoners to the 44th Precinct stationhouse. There, Lt. Morales decided to release § 87(2)(b) with a summons for § 87(2)(b). PO Smith issued the summons to § 87(2)(b) directly.

When shown video footage of the incident taken by § 87(2)(b), PO Smith identified himself as one of the officers who struggled with § 87(2)(b). The video also showed § 87(2)(b) being taken to the ground. When asked to account for the discrepancies, PO Smith recalled that he assisted in pulling § 87(2)(b)'s arms behind his back once he was on the ground. He did not recall if any other force was used against § 87(2)(b). He did not recall why § 87(2)(b) was taken to the ground.

Subject Officer: PO WILFREDO BENITEZ

- PO Benitez, § 87(2)(b) old at the time of the incident, is a 5'9", 198-pound Hispanic male with black hair and brown eyes.
- PO Benitez worked from 11:30 p.m. on July 4, 2013 until 6:05 a.m. on July 5, 2013. He was assigned to Conditions, and worked with PO Andre Smith. PO Benitez was in uniform, and assigned to marked van #8625.

Memo Book

At 1:10 a.m. on July 5, 2013, PO Benitez was assigned to respond to a noise complaint at the intersection of McClellan Street and Sheridan Avenue. At 1:18 a.m., PO Benitez arrived at the location and ordered a crowd of people to disperse. One individual, identified as § 87(2)(b), refused to leave. When PO Benitez attempted to arrest § 87(2)(b), he resisted arrest. PO Miller and PO Kelly assisted in the arrest. Lt. Morales was present during the arrest (Encl. 10A-C).

CCRB Testimony

PO Benitez was interviewed at the CCRB on January 31, 2014 (Encl. 10D-F). § 87(2)(g)

PO Benitez's assignment changed several times over the course of his tour. However, around the time of the incident PO Benitez was at the stationhouse, and was instructed to respond to a report

of a crowd at the intersection of McClellan Street and Sheridan Avenue. PO Benitez and PO Smith responded to the location in a marked van. No other officers were with them.

While speaking to § 87(2)(b) at the location, PO Benitez stated that he warned § 87(2)(b) that if he did not leave, he would be arrested for disorderly conduct. When § 87(2)(b) still refused to leave, PO Benitez decided to issue the summons. Since he and PO Smith were outnumbered by § 87(2)(b)'s friends, he decided that it would be safer to detain § 87(2)(b) and transport him to the stationhouse, and issue the summons there. PO Benitez called Sgt. Garrett over the radio to request backup. While Sgt. Garrett was unavailable to assist PO Benitez, several other officers, including Lt. Morales, PO Kelly, and PO Miller responded.

Once the backup officers arrived, PO Benitez attempted to handcuff § 87(2)(b) by pulling his arms back. § 87(2)(b) resisted by pulling his arms away from PO Benitez and flailing them at his side. He also twisted his body away from PO Benitez. In order to overcome this resistance, PO Benitez pushed § 87(2)(b) against a nearby parked car. PO Smith and PO Kelly, seeing § 87(2)(b)'s resistance, moved in to assist PO Benitez. Several bystanders moved towards § 87(2)(b) during the arrest. Fearing that they meant to interfere, PO Benitez shouted several times for the bystanders to step back.

As § 87(2)(b) continued to resist while against the car, the officers brought him to the ground. PO Benitez did not recall how the officers forced him down, or how § 87(2)(b) landed once on the ground. Once § 87(2)(b) was on the ground, however, the officers were quickly able to gain control of his arms and handcuff him.

PO Benitez and PO Smith were the only officers who rode with § 87(2)(b) in the van. PO Benitez did not recall seeing § 87(2)(b) operate a cell phone while inside of the prisoner van. He did not see any officer strike § 87(2)(b) either during his arrest or in the van. § 87(2)(b) did not complain of any injuries, request medical attention, or ask for any officer's name or shield number. PO Benitez did not observe any injuries to § 87(2)(b). No officer told § 87(2)(b) "Shut the fuck up." No officer used profanity at any point during the incident. PO Benitez did not hear any officer threaten to arrest any of the bystanders during the incident.

When he was shown § 87(2)(b)'s video footage, PO Benitez identified himself as one of the officers seen struggling with § 87(2)(b) on the ground.

Subject Officer: PO SEAN KELLY

- *PO Kelly, § 87(2)(b) old at the time of the incident, is a 5'8", 200-pound white male with brown hair and green eyes.*
- *PO Kelly worked from 10:30 p.m. on July 4, 2013 until 5:05 a.m. on July 5, 2013. He was assigned to Anti-Crime, and worked with PO Eric Miller. PO Kelly was in uniform, and assigned to an unmarked black Crown Victoria, RMP #0155.*

Memo Book

At 1:00 a.m. on July 5, 2013, PO Kelly responded to a call for backup at the intersection of McClellan Street and Sheridan Avenue. At 1:30 a.m., he resumed patrol. He does not have any further entries regarding § 87(2)(b) or § 87(2)(b). His next memo book entry is a 2:20 a.m., regarding a stop made at the intersection of East 167th Street and Teller Avenue (Encl. 11A-B).

CCRB Testimony

PO Kelly was interviewed at the CCRB on February 26, 2014 (Encl. 11C-E). At approximately 1:00 a.m. on July 5, 2013, PO Kelly was on patrol with PO Miller. The two officers received a call for backup over the radio from an officer from the Conditions team, identified by the investigation as PO Benitez, at the intersection of McClellan Street and Sheridan Avenue, in the Bronx. The two responded to the location a few minutes later. When PO Kelly arrived, he found PO Smith and PO Benitez interacting with a crowd of approximately twenty people. The crowd was aggressive, and shouted profanities at the two officers. Additional officers responded to the location shortly after PO Kelly arrived. While PO Kelly did not recall who these officers were, the investigation identified them as Lt. Morales and PO Rivera.

When PO Kelly first arrived, he saw PO Smith and PO Benitez speaking to a male, identified by the investigation as § 87(2)(b). PO Smith and PO Benitez had arrived at the location in a marked van. PO Kelly did not recall what § 87(2)(b) and the officers were saying to each other, or why the officers were speaking to § 87(2)(b) in the first place. He did not recall seeing § 87(2)(b) engage in any behavior that he would consider disruptive or disorderly.

PO Kelly noted that several of the more aggressive members of the crowd were approaching § 87(2)(b) and the two officers. He stepped between the crowd members and the officers, and told them in a loud voice to step back.

As PO Kelly dealt with the crowd, he saw in the corner of his eye that § 87(2)(b) was standing within inches of PO Smith and PO Benitez. He then observed § 87(2)(b) make a quick gesture towards the two officers. PO Kelly was unable to describe this gesture in any detail. He did not know if § 87(2)(b) attempted to strike one of the officers. After this gesture, § 87(2)(b) engaged in some sort of physical struggle with the two officers. By this time, however, PO Kelly's attention returned to the crowd. He did not recall any details of this struggle, including the officers involved, or specific actions taken by either the officers or § 87(2)(b). He did not recall how long the struggle lasted, or whether § 87(2)(b) was taken to the ground at any point.

Ultimately, § 87(2)(b) was placed in handcuffs, and escorted to PO Smith's and PO Benitez's marked van. PO Kelly did not see which officer took these actions. He did not observe any injuries to § 87(2)(b) at that point. Once § 87(2)(b) was secured in the van, PO Kelly and PO Miller returned to their vehicle and resumed their patrol. PO Kelly denied riding in the van with § 87(2)(b). He had no further interactions with § 87(2)(b) beyond that point, including at the 44th Precinct stationhouse. PO Kelly was unaware of any subsequent arrests made by PO Smith or PO Benitez. He did not know if § 87(2)(b) was arrested or issued a summons, or if he received any type of medical care while in police custody.

PO Kelly did not observe § 87(2)(b) operating a cell phone while inside of the van. He did not see any officer take § 87(2)(b)'s cell phone. He did not see any officer use any sort of force against § 87(2)(b) inside of the van. He did not hear § 87(2)(b) request names, shield numbers, or medical attention from any of the officers. PO Kelly did not tell § 87(2)(b) "Shut the fuck up." He did not hear any officer use profanity during the incident.

When he was shown video footage of § 87(2)(b)'s arrest, PO Kelly identified himself as the white male officer seen telling the bystanders, "Back off." PO Kelly did not recall the incident in any greater detail after watching the footage.

Witness Officer: PO ERIC MILLER

- *PO Miller, § 87(2)(b) old at the time of the incident, is a 5'8", 155-pound black male. He is bald, and has brown eyes.*
- *PO Miller worked from 10:30 p.m. on July 4, 2013 until 5:05 a.m. on July 5, 2013. He was assigned to Anti-Crime with PO Sean Kelly. PO Miller was in uniform, and assigned to an unmarked black Crown Victoria, RMP #0155.*

Memo Book

At 1:00 a.m. on July 5, 2013, PO Miller received a call for backup at the intersection of McClellan Street and Sheridan Avenue. There, PO Miller assisted in handcuffing a disorderly individual. At 1:30 a.m., PO Miller resumed patrol. PO Miller did not have any further entries regarding § 87(2)(b) or § 87(2)(b). His next entry, at 2:20 a.m., is in regards to a stop occurring at the intersection of Merriam Avenue and Ogden Avenue (Encl. 12A-C).

CCRB Testimony

PO Miller was interviewed at the CCRB on February 26, 2014 (Encl. 12D-F). § 87(2)(g)

When PO Miller and PO Kelly arrived at the location, he heard PO Benitez tell § 87(2)(b) that he was under arrest, and that he was going to be taken back to the 44th Precinct stationhouse. § 87(2)(b) shouted back that he was not going anywhere. PO Benitez then turned to PO Miller and explained that he wanted to issue § 87(2)(b) a summons for disorderly conduct, but felt that it would be safer to do so at the stationhouse, as the crowd surrounding them appeared hostile.

PO Miller and PO Benitez attempted to handcuff § 87(2)(b) by grabbing his arms. § 87(2)(b) reacted by pulling his arms back and twisting his body away from them, towards a nearby parked car. Both officers then reached out to secure § 87(2)(b)'s arms. When PO Miller pulled at § 87(2)(b)'s arms, however, he accidentally used too much force, causing § 87(2)(b) and thereby PO Miller and PO Benitez as well, to fall over backwards, away from the car. All three landed on their backs, with § 87(2)(b) between the two officers. Both officers managed to get to their feet before § 87(2)(b). They were then able to turn § 87(2)(b) onto his front. § 87(2)(b) responded by pulling his arms underneath his chest. PO Miller and PO Benitez, however, were able to pull § 87(2)(b)'s arms back and handcuff him. No other officers assisted in the arrest. No force was used against § 87(2)(b) during his arrest beyond pulling at his arms.

Throughout the struggle with § 87(2)(b) PO Kelly and PO Smith engaged in crowd control, telling the crowd to get back. PO Miller denied riding with § 87(2)(b) in the marked van when he was taken from the location. He had no further interactions with § 87(2)(b) after the arrest. PO Miller was not aware of § 87(2)(b)'s arrest at 1244 Grand Concourse. He did not know if § 87(2)(b) was arrested or issued a summons, or if he received any type of medical care while in police custody.

PO Miller did not observe § 87(2)(b) operating a cell phone while inside of the van. He did not see any officer take § 87(2)(b)'s cell phone. He did not see any officer use any sort of force against § 87(2)(b) inside of the van. He did not hear § 87(2)(b) request names, shield

numbers, or medical attention from any of the officers. PO Miller did not hear any officer tell § 87(2)(b) “Shut the fuck up,” or use any profanity during the incident.

When he was shown video footage of § 87(2)(b)'s arrest, PO Miller identified himself as the black male officer seen wearing glasses.

Witness Officer: LT. WILBERT MORALES

- *Lt. Morales, § 87(2)(b) old at the time of the incident, is a 5'9", 190-pound Hispanic male with brown hair and brown eyes.*
- *On July 4, 2013, Lt. Morales worked from 2:45 p.m. until 11:30 p.m. He then worked overtime lasting until 2:05 a.m. on July 5, 2013. He worked as the tour 3 platoon commander for the 44th Precinct, with PO Michael Rivera was his operator. Lt. Morales was in uniform, and assigned to marked SUV #5666.*

Memo Book

Lt. Morales did not have any memo book entries regarding the incident (Encl. 13A-B).

CCRB Testimony

Lt. Morales was interviewed at the CCRB on October 23, 2013 (Encl. 13C-E). § 87(2)(g)

Lt. Morales was on patrol by himself in a marked SUV at the time of the incident. His operator, PO Rivera, had remained at the stationhouse after making an arrest earlier in the evening. Lt. Morales did not receive any calls for backup, instead observing the situation himself when he drove by.

When Lt. Morales first arrived, § 87(2)(b) was speaking to PO Smith and PO Benitez. Lt. Morales did not recall if any other officers were present when he arrived. § 87(2)(b) was speaking in an agitated voice, but was not making any gestures or movements. The two officers then approached Lt. Morales and explained that they were trying to disperse § 87(2)(b)'s gathering, before returning to § 87(2)(b). Several unidentified bystanders asked Lt. Morales why PO Smith and PO Benitez were speaking to § 87(2)(b). Lt. Morales attempted to calm them, explaining that the officers were trying to get the crowd to disperse peacefully.

Only PO Smith and PO Benitez were involved in the effort to arrest § 87(2)(b). Lt. Morales did not mention any discussion of taking § 87(2)(b) into custody to issue him a summons for disorderly conduct. Lt. Morales did not recall the officers either pushing § 87(2)(b) against any objects, such as a car, or taking him to the ground. Beyond pulling at his arms, PO Smith and PO Benitez did not use any additional force to restrain § 87(2)(b). Lt. Morales did not observe any injuries to § 87(2)(b).

After § 87(2)(b) was handcuffed and placed in the prisoner van, Lt. Morales informed several of the bystanders that if § 87(2)(b) did not have any open warrants against him, he would likely be released with a summons at the stationhouse in a few hours. He then left the location in his marked SUV. He did not accompany § 87(2)(b)'s transporting officers, and was not involved in § 87(2)(b)'s arrest at 1244 Grand Concourse. He later returned to the 44th Precinct stationhouse, where he found § 87(2)(b) and § 87(2)(b) being processed. Several of the

bystanders he had spoken to earlier were waiting outside of the stationhouse. As he had explained, § 87(2)(b) was issued a disorderly conduct summons when his warrant check came back negative. Lt. Morales was not aware of § 87(2)(b) receiving any medical treatment while in custody.

Lt. Morales did not see any officer use any sort of force against § 87(2)(b) inside of the van. He did not hear § 87(2)(b) request names, shield numbers, or medical attention from any of the officers. Lt. Morales did not hear any officer tell § 87(2)(b) “Shut the fuck up,” or use any profanity during the incident.

When he was shown video footage of § 87(2)(b)'s arrest, Lt. Morales identified himself as the white-shirted officer. When it was pointed out to him that the footage showed § 87(2)(b) being pushed against the car and taken to the ground, Lt. Morales stated that he did not recall either of these actions. Lt. Morales also identified PO Rivera as the uniformed officer seen standing next to him as he spoke to the bystanders. He then stated that PO Rivera must not have remained at the stationhouse as he had previously stated.

Subject Officer: PO MICHAEL RIVERA

- PO Rivera, § 87(2)(b) old at the time of the incident, is a 5'11", 185-pound Hispanic male with black hair and brown eyes.
- On July 4, 2013, PO Rivera worked from 3:00 p.m. to 11:35 p.m. He then worked overtime lasting until 2:05 a.m. on July 5, 2013. He was assigned as Lt. Wilbert Morales' operator. PO Rivera was in uniform, and assigned to marked SUV #5666.

Memo Book

PO Rivera did not have any memo book entries regarding the incident (Encl. 14A-C).

CCRB Testimony

PO Rivera was interviewed at the CCRB on March 24, 2014 (Encl. 14D-E). PO Rivera did not recall the incident in any significant detail. He was aware that he and Lt. Morales responded to an incident at approximately 1:00 a.m. on July 5, 2013, at the intersection of McClellan Street and Sheridan Avenue, in the Bronx. He did not, however, recall what occurred at the location. He did not recall the incident after being given a brief synopsis, or reviewing § 87(2)(b)'s summons, § 87(2)(b)'s arrest report, or the video footage of § 87(2)(b)'s arrest. He did not recognize a photograph of § 87(2)(b). PO Rivera stated that he rode in a vehicle with Lt. Morales for the entirety of his tour, and did not ride in a vehicle with any other officers.

When he was shown video footage of § 87(2)(b)'s arrest, PO Rivera identified Lt. Morales as the white-shirted officer seen addressing several bystanders near the end of the video. He also identified himself as the uniformed officer standing next to Lt. Morales.

Witness Officer: PO ANDERSON ORTIZ

- PO Ortiz, § 87(2)(b) old at the time of the incident, is a 5'9", 175-pound Hispanic male with brown hair and brown eyes.
- PO Ortiz worked from 10:30 p.m. on July 4, 2013 until 5:05 a.m. on July 5, 2013. He was the operator for Sgt. Miguel Sanchez, the Anti-Crime supervisor. PO Ortiz was in uniform, and assigned to an unmarked black sedan, RMP #0234.

Memo Book

PO Ortiz did not have any memo book entries regarding the incident. At 12:10 a.m. on July 5, 2013, PO Ortiz stopped a male at East 170th Street and College Avenue. At 12:13 a.m., he prepared a Stop, Question and Frisk Report in regards to the stop. At 1:55 a.m., PO Ortiz responded to a report of a domestic dispute at § 87(2)(b) (Encl. 15A-C).

CCRB Testimony

PO Ortiz was interviewed at the CCRB on February 26, 2014 (Encl. 15D-E). PO Ortiz denied being present at the incident. On July 5, 2013, he worked as Sgt. Sanchez's operator, and was with him for the entirety of his tour. While he was not occupied by any other jobs at the time of the incident, he denied responding to any events at the intersection of McClellan Street and Sheridan Avenue, in the Bronx, at any point during the night. PO Ortiz did not work directly with either PO Kelly or PO Miller, who were also assigned to Anti-Crime at the time.

Medical Records

At 11:39 a.m. on July 5, 2013, § 87(2)(b) was transported by EMS to § 87(2)(b). The FDNY Prehospital Care Report indicates that he received unspecified injuries while fighting with the police during his arrest.

According to his § 87(2)(b) medical records, § 87(2)(b) complained of pain to his right elbow, right knee, chest, and lower back. X-rays revealed no fractures to any of these areas. § 87(2)(b) was prescribed Motrin for his pain (Encl. 17A).

NYPD Document(s)

44th Precinct Command Log

§ 87(2)(b) and § 87(2)(b) arrived at the 44th Precinct stationhouse at 1:25 a.m. on July 5, 2013. § 87(2)(b) had been arrested for § 87(2)(b) at § 87(2)(b) by PO Smith. His physical and mental condition is listed as apparently normal. He was released with a summons at 2:20 a.m. (Encl. 18L).

Other Evidence

Video Recording

§ 87(2)(b) provided a four-minute cell phone video of the incident, taken by § 87(2)(b).

At the beginning of the video, a black male, identified as § 87(2)(b) is seen standing next to a black sedan. Two officers, identified as PO Benitez and PO Smith, are standing next to him. Three other officers, identified as Lt. Morales, PO Miller and PO Rivera, are standing nearby. When § 87(2)(b) reaches his right hand onto the roof of the car, PO Smith pulls him down to the ground by the chest. § 87(2)(b) lands on his back. All five officers gather around § 87(2)(b) and pull his hands behind his back. As the officers attempt to restrain § 87(2)(b) an officer, identified as PO Kelly, approaches § 87(2)(b) and repeatedly shouts, "Back up!"

As the officers handcuff § 87(2)(b) several unidentified civilians approach the officers, forcing PO Kelly to step between them and the officers. Once § 87(2)(b) is handcuffed, PO Smith lifts him to his feet and escorts him to a marked van, while the rest of the officers tell the bystanders to step back. § 87(2)(b) is loudly protesting his arrest as he is walked to the van.

After § 87(2)(b) is in the van, § 87(2)(b) approaches Lt. Morales, who explains that several noise complaints were made in regards to the gathering. He then asks § 87(2)(b) to turn his camera off. After several moments, § 87(2)(b) complies, ending the footage (Encl. 16A).

Audio Recording

§ 87(2)(b) provided a thirty-second audio recording of the incident, taken when he spoke to PO Benitez in the marked van. In it, § 87(2)(b) can be heard arguing with PO Benitez about his arrest, claiming that he was packing up his belongings when he was taken into custody. § 87(2)(b) then asks PO Benitez, “What is your name?” PO Benitez initially responds, “There’s no need for that.” When § 87(2)(b) repeats the request, he replied, “Officer Benitez.” § 87(2)(b) then asks, “What’s your shield number?” The recording ends before any response is heard (Encl. 16B).

Summons/Arrest for Incident and Disposition

- On § 87(2)(b), summons number § 87(2)(b) was dismissed (Encl. 20M).

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming assault and verbal abuse, and seeking \$1,000,000 as redress (Encl. 6E-H).

Civilian(s) Criminal History

- § 87(2)(b)

Civilian(s) CCRB History

- § 87(2)(b) has filed the following CCRB complaints (Encl. 3A):
 - § 87(2)(b)
- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 3B).

Subject Officer(s) CCRB History

- PO Andre Smith has been a member of the service for nine years and there are no substantiated CCRB allegations against him (Encl. 2A-B).
- PO Wilfredo Benitez has been a member of the service for five years and there are no substantiated CCRB allegations against him (Encl. 2C).
- PO Sean Kelly has been a member of the service for three years and there are no substantiated CCRB allegations against him (Encl. 2D).
- PO Michael Rivera has been a member of the service for four years and there are no substantiated CCRB allegations against him (Encl. 2E).
- Lt. Wilbert Morales has been a member of the service for twenty-four years and there is one substantiated CCRB allegation against him (Encl. 2F-I).

- In case #9403275, a force allegation was substantiated against Lt. Morales. No disciplinary recommendation was made.

Conclusion

Identification of Subject Officer(s)

- § 87(2)(b) described the officer who punched him and refused to provide his name as a 5'7" white male in his twenties. He further stated that this officer was the white officer seen in the video footage of his arrest. PO Kelly was the only white officer present at the incident. He further identified himself as the officer § 87(2)(b) had indicated in the video. § 87(2)(g)
- § 87(2)(b) alleged that he requested medical attention from the five officers who transported him to the 44th Precinct stationhouse in the marked van. Only PO Smith and PO Benitez, however, were assigned to the van, while the rest of the officers at the incident arrived in their own vehicles. All of the officers interviewed consistently stated that PO Smith and PO Benitez alone transported § 87(2)(b) in their van. § 87(2)(g)

Allegations Not Pleaded

- § 87(2)(b) alleged that PO Benitez threatened to arrest him and several other individuals, telling them, "You gotta go or I'm gonna arrest you." It is undisputed that § 87(2)(b) s and § 87(2)(b) s group were occupying both the street and the adjacent sidewalk near the intersection, and that the party had continued on past midnight. § 87(2)(g)
- § 87(2)(b) stated that PO Benitez and PO Smith pushed him down to the ground while arresting him at the intersection of McClellan Street and Sheridan Avenue. He did not suffer any injuries as a result of this. § 87(2)(g)
- § 87(2)(b) alleged that PO Kelly responded to his requests for both medical attention and his name by stating, "Shut the fuck up." § 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Force –PO Sean Kelly used physical force against § 87(2)(b)

Allegation B: Abuse of Authority –PO Sean Kelly refused to provide his name to § 87(2)(b)

Allegation E: Abuse of Authority –PO Sean Kelly did not obtain medical treatment for

§ 87(2)(b)

Allegation F: Abuse of Authority – Officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that all of the officers he identified at his arrest location, except for Lt. Morales, rode with him in the marked van after his arrest, including PO Smith, PO Benitez, and PO Kelly. § 87(2)(b) alleged that shortly after § 87(2)(b) was arrested, PO Kelly punched him several times in the chest and ignored a request for his name. § 87(2)(b) then asked all five officers for medical attention. PO Kelly responded by once again stating, “Shut the fuck up.” None of the other officers were alleged to have responded.

The officers consistently stated that PO Smith and PO Benitez transported § 87(2)(b) to the stationhouse by themselves. These officers stated that only PO Smith and PO Benitez were assigned to the marked van, and that the rest of the officers arrived in their own vehicles, an assertion corroborated by § 87(2)(b). PO Kelly and PO Miller both stated that they resumed patrol after § 87(2)(b)'s arrest, and denied any knowledge of, or involvement in, § 87(2)(b)'s arrest. This is corroborated by their memo books, which indicates that they were in the field after § 87(2)(b)'s arrest, rather than at the stationhouse.

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority – PO Andre Smith did not obtain medical treatment for

§ 87(2)(b)

Allegation D: Abuse of Authority –PO Wilfredo Benitez did not obtain medical treatment for § 87(2)(b)

While it has already been established that most of the officers § 87(2)(b) alleged to have been in the van when he requested medical attention were not actually present, it is undisputed that PO Smith and PO Benitez were present. Both officers denied hearing § 87(2)(b) request medical attention, or observing any injuries to him.

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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